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SUBJECT: SUPREME COURT OVERTURNS ACQUITTAL OF POLITKOVSKAYA
DEFENDANTS

REF: MOSCOW 422

11. (SBU) Summary: On June 25, Russia's Supreme Court overturned the February acquittal of three men charged with the murder of Novaya Gazeta journalist Anna Politkovskaya, citing serious procedural violations, and ordered a retrial. The defendants' lawyers called the decision "political," and stated publicly their intention to appeal the decision. Assuming the defense appeal is unsuccessful, the case will now be sent back for a new trial with a new judge and new jury. The earliest possible date would be the fall of 2009, but no date has yet been set. Lawyers representing Politkovskaya's family did not support the Supreme Court's decision, saying that the verdict had been logical given the lack of evidence against the defendants. Human rights defenders supported the use of a jury trial in February, and respected the jury's decision, but continue to lament the lack of justice for Politkovskaya's real killers. End Summary.

12. (U) On June 25, Russia's Supreme Court overturned the February acquittal of three men charged with the murder of Novaya Gazeta journalist Anna Politkovskaya (reftel) and ordered a retrial. Two Chechen brothers, Dzhabrail and Ibragim Makhmudov, along with former Moscow policeman Sergey Khadzhiurbanov, were cleared of offering the killer operational support. The fourth defendant, Pavel Ryaguzov, a lieutenant colonel in the FSB, was acquitted in a separate but joined case. The alleged triggerman, Rustam Makhmudov, remains at large, and is suspected to be abroad.

13. (SBU) Vera Pashkovskaya, one of the prosecutors in the case, told us June 25 that the verdict was overturned on the grounds of "serious procedural violations" during the trial, the only grounds recognized under Russian law for reversing a jury verdict. She identified, among others, the following procedural violations:

- The defense lawyers introduced inadmissible evidence, including evidence related to the personal characteristics of the defendants, and asked improper questions. The judge failed to properly instruct the jury not to take this evidence into account;
- The judge's behavior in opening the trial, then closing the trial, then opening it after a public dispute with one of the jurors prejudiced the jury against the prosecution. Specifically, the prosecutors had originally sought a closed trial, and when the judge eventually closed it, falsely blaming the jury, this prejudiced the jury against the prosecution;
- The defense and the judge discussed procedural issues in the presence of the jury.

14. (U) The defendants' lawyers called the decision "political," and stated publicly their intention to appeal the decision. Under Russian law, they can appeal to the supervisory body (nadzornaya instantsiya) of the Supreme

Court, but these appeals are rarely successful. Assuming the defense appeal is unsuccessful, the case will now be sent back for a new trial with a new judge and new jury. (Note: Approximately 40 percent of jury acquittals are overturned on appeal. End Note.) No date has yet been set; gazeta.ru reported on June 25 that the earliest possible date would be the fall of 2009. Such a trial would be contingent on finding the defendants, who at this point may be fugitives.

15. (SBU) Lawyers representing Politkovskaya's family, Karinna Moskalenko and Anna Stavitskaya, did not support the appeal to the Supreme Court for a retrial. Stavitskaya told us June 26 that the February verdict had been "perfectly logical" given the lack of evidence against the defendants, and that there was no basis for an appeal. Sergey Sokolov, Deputy Editor in Chief of Novaya Gazeta, told us that the case "has little, if anything, to do with these figures," and that what interested him above all was determining who gave the order for the killing. Among Politkovskaya's supporters, there is no consensus as to the guilt or innocence of the defendants. Most, like Sokolov, believe that they were at least tangentially involved, and some, such as Politkovskaya's son Ilya, believe that they were central to the plot.

16. (SBU) Human rights activists greeted the decision with the same ambivalence that they felt when the acquittal took place. Just as in February, when activists supported what they saw as a successful example of a jury trial, but felt frustration at the lack of justice served, so our contacts now have mixed feelings about the latest development. Simonov told us that it was "disappointing" to see another example of the system's lack of trust in jury trials, but

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that the decision was good for Politkovskaya's family, as "the official version of this case is idiotic," and this may afford another opportunity to uncover the truth. Lev Ponomarev of For Human Rights told us June 26 that it was "clear" that "this is a group of fall guys," and that it was unfortunate that investigators have failed to establish any connection to the special services, who he feels were undoubtedly involved in the murder. According to Ponomarev, in the most likely scenario the new trial will lead to a guilty verdict, and "then they will forget the whole thing" without further investigation into the person or people who ordered the killing.

Comment

17. (SBU) The reversal of the Polikovskaya verdict is not a surprise. Approximately 40 percent of Russian jury acquittals are reversed, and this trial was, by all accounts, marred by serious procedural errors. The real question now is whether the defendants can be located and brought to trial, or whether the case will be suspended due to their fugitive status, as appears to have happened in the Paul Klebnikov case. While some of Politkovskaya's supporters have criticized investigators for pursuing the lowest level conspirators, rather than those who commissioned the murder, the two are not mutually exclusive. In fact, often the only way to get to the top rung of a conspiracy is by working up the ladder through prosecutions of lower level members. The reversal gives the prosecutors another chance to start this process, assuming that he case is not simply forgotten. Post recommends that we continue to draw high-level attention to this case by calling on the GOR to use all appropriate measures to apprehend and prosecute all those responsible.
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